

## FOREWORD: WALTER DELLINGER AND THE PATH OF CONSTITUTIONAL LAW\*

WILLIAM P. MARSHALL\*\*

The path of constitutional law is not marked only by judicial decisions. It is framed by the litigants who present their arguments before the courts. It is constructed by the legal advisors who counsel those in authority on the limits of their power. It is fashioned by the scholars who seek truths in history, text, precedent, and foundational principles. It is shaped by the op-ed writers and media commentators who influence public discourse. It is preserved by the professors who pass their knowledge to their students and by the mentors who nurture future leaders who will carry on their mission. And it is emblazoned by the pioneers who devote their lives to the cause of justice.

Walter Dellinger was all of these things. As a litigant in the Office of the Solicitor General, where he served as the Acting Solicitor General, and then as an attorney with O'Melveny and Myers, he argued 24 cases before the Supreme Court, including some of the most important cases of the last thirty years. These include *District of Columbia v. Heller*<sup>1</sup> (Second Amendment), *Clinton v. Jones*<sup>2</sup> (presidential immunity from suit), *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*<sup>3</sup> (the ministerial exception to Civil Rights laws), *Washington v. Glucksberg*<sup>4</sup> (physician-assisted suicide), *Hunt v. Cromartie*<sup>5</sup> (North Carolina racial gerrymandering), *Turner Broadcasting System v. FCC*<sup>6</sup> (FCC must-carry rules), *Schenck v. Pro-Choice Network of Western New York*<sup>7</sup> (abortion protests), *Printz v. United States*<sup>8</sup> (anti-commandeering), and *City of Boerne v. Flores*<sup>9</sup> (Congress's power under Section 5 of the Fourteenth Amendment).

As an advisor, he counselled the Clinton Administration as an attorney in the Office of the White House Counsel and then as the head of the Office of

---

\* © 2024 William P. Marshall.

\*\* William Rand Kenan Jr. Distinguished Professor of Law, University of North Carolina School of Law.

1. 554 U.S. 570 (2008).
2. 520 U.S. 681 (1997).
3. 565 U.S. 171 (2012).
4. 521 U.S. 702 (1997).
5. 526 U.S. 541 (1999).
6. 520 U.S. 180 (1997).
7. 519 U.S. 357 (1997).
8. 521 U.S. 898 (1997).
9. 521 U.S. 507 (1997).

Legal Counsel, where he authored some of the most important legal memoranda ever produced by that Office. He later played key roles in advising the Obama and Biden Administrations and in working with former Solicitors General Seth Waxman and Donald Verrilli on the complex and explosive legal issues that surrounded the 2020 election.

As a frequent op-ed writer and media commentator, he made constitutional law accessible to millions of readers and viewers. As a scholar, he wrote groundbreaking articles on a full range of constitutional issues, applying precision and rigor to each of his writings. As a professor, he inspired countless students with his charismatic teaching, imparting his own profound sense of constitutional meaning and history. As a mentor, he nurtured some of the best legal minds this country has ever seen, including many of whom are now on the bench or in academia and many of whom are also present at this Symposium.

By any measure, then, the influence of Walter Dellinger on the path of constitutional law cannot be overstated. He unequivocally stands as one of the most important figures in the history of American Constitutional Law. It is therefore not surprising that the imprint of his footsteps can be seen in almost every area of constitutional law: racial justice, freedoms of speech and religion, gender equality, reproductive rights, LGBTQ rights, election law, separation of powers, the Second Amendment, government lawyering, legal history, the amendment process, and constitutional theory. So in the pages that follow, and in a format that Walter would have most enjoyed, a cadre of our Nation's leading academics will directly engage his ideas and his legacy.

Before proceeding to these essays, however, two other essential aspects of Walter's legacy must be underscored. The first is Walter's commitment to civil rights. Walter's devotion to the cause of racial justice was lifelong, passionate, and self-defining. But it was never easy. Walter grew up in the segregated South (Charlotte) and became involved in the Civil Rights movement at an early age, often accepting ostracization and at times risking bodily harm as the price of his principles. Indeed, his early embrace of civil rights was so strong that while an undergraduate at the University of North Carolina, he received the Frank Porter Graham Award for the Senior with the most outstanding commitment to the ideals of equality, dignity, and community. His sensitivity to racial injustice, moreover, was relentless. He saw social inequities where most would not notice and he believed those inequities had to be combatted on all fronts. And though he knew that the odds were often against him, he had an irrepressible optimism that somehow adherence to the Constitution and the rule of law would erase those inequities and make this a better world.

The second is Walter's great gift as a storyteller. As shown in his own manuscript in this Symposium: *Reflections on Race, the Constitution, and Growing Up in the Segregated South*, Walter had an encyclopedic mind regarding music,

sports, history, and popular culture and was able to seamlessly weave facts from those disciplines along with his own experiences into stories that held moral and legal significance. And through his storytelling, he made constitutional law real and relatable and therefore all the more powerful.

It is therefore fitting that this Symposium is entitled *Walter Dellinger and the Path of Constitutional Law*, as few individuals have influenced the course of constitutional law as much as he has. True, the path of constitutional law has not always led in the exact direction that Walter most desired, but that path was always wider and fuller because his efforts. And, it just might be that because of the power of his legacy, the seeds of equity and social justice that he planted by the side of that path will someday yet grow to fruition.

